

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1453 w/CS Vessels
SPONSOR(S): Berfield, Greenstein, and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Highway Safety (Sub)	10 Y, 0 N	Garner	Miller
2) Transportation	18 Y, 0 N	Garner	Miller
3) Judiciary	14 Y, 0 N w/CS	Billmeier	Havlicak
4)			
5)			

SUMMARY ANALYSIS

HB 1453 substantially amends provisions governing the nonjudicial sale of vessels by marinas. Primarily, the bill eliminates the current requirement that a marina seeking to satisfy a lien against a vessel obtain two independent appraisals of the vessel prior to auction, and that the vessel be sold for at least 50 percent of the appraised value.

The bill takes effect upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1453d.ju.doc
DATE: April 21, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Current law provides for the nonjudicial sale of vessels subject to a marina's liens for nonpayment of marina storage fees and unpaid costs of removal for failure to maintain a vessel in a sanitary condition. In addition, the law provides for the nonjudicial sale of vessels subject to a lien for unpaid costs of repairs and improvements.

Sale of Vessels for Nonpayment of Marina Rent

A marina may sell a vessel at auction when the owner fails to pay storage or dockage fees due, or the marina is required to remove an unsanitary vessel and the towing and storage costs remain unpaid. The proceeds derived from such an auction are subject to prior recorded liens.¹ All written leases for storage of undocumented vessels at a marina must contain provision authorizing a nonjudicial sale if rent is not paid for 6 months.² These leases are enforceable if:

- The lease contains the address of the vessel owner, and the marina notifies the owner via certified or registered mail at least 30 days prior to the sale;
- The marina notifies all recorded lienholders at least 30 days prior to the sale; and
- The marina publishes notice of the time and place of the sale in a newspaper of general circulation at least 10 days prior to the sale containing a description of the vessel, and a conspicuous statement that the sale will be at public auction with sale to the highest bidder, provided the sale price is greater than 50 percent of the fair market value of the vessel. Fair market value must be determined by 2 independent appraisals by factory representatives of the vessel's manufacturer or licensed marine surveyors.³

If the proceeds from the sale exceed the storage costs incurred by the marina, and the costs of the sale, the balance must be deposited with the clerk of court to be returned to the previous owner or the marina within 1 year, less any fee charged by the clerk.⁴

¹ See s. 328.17(3), F.S.

² See s. 328.17(4), F.S.

³ See ss. 328.17(4)(a) – 328.17(4)(c), F.S.

⁴ See s. 328.17(5), F.S.

The marina is required, at the time of the sale, to deliver to the purchaser a bill of sale and certified copies of all notice and appraisal documents.⁵ The purchaser must submit these documents and the bill of sale to the Department of Highway Safety and Motor Vehicles (DHSMV) with an application for transfer of vessel title.⁶

Sale of Vessels for Repairs, Improvements, or Other Works

A person who has lawful physical possession of an undocumented vessel for repairs, improvements, or other work, has an unrecorded lien against the vessel for all reasonable costs of the completed work and any reasonable towing and storage charges.⁷ If these costs are unpaid 90 days after notice to the vessel owner that the work has been completed, the person in possession may sell the vessel at public auction.⁸ The sale of the vessel is valid and enforceable if:

- Notice of a nonjudicial sale is sent by certified or registered letter with return receipt to all owners and lienholders at least 30 days prior to the sale, containing an itemized invoice of charges owed; and
- The notice is published in general circulation in the county of the repair business and the county of owner's last known address at least 10 days prior to sale of the vessel. The notice must include the time and place of the sale, a description of the vessel including the name of the owner, and a statement that the sale will be at public auction with sale to the highest bidder, provided the sale price is greater than 50 percent of the fair market value of the vessel. Fair market value must be determined by 2 independent appraisals by factory representatives of the vessel's manufacturer or licensed marine surveyors.⁹

If proceeds from the sale exceed reasonable costs for the work done, costs of the sale, and reasonable towing and storage costs, the balance must be deposited with the clerk of court. The clerk is entitled to 5 percent of the proceeds. Within 1 year after sale, former owners or lienholders may recover net proceeds by filing a claim with the clerk against the county.¹⁰

The seller is required to deliver a bill of sale and pertinent notice documents to the purchaser, who must submit them to DHSMV with an application for transfer of title.¹¹

Effect of Proposed Changes

HB 1453 creates nonjudicial sales procedure for vessels that is modeled after lien enforcement provisions relating to self-service storage space.¹² The bill provides that any vessel held for unpaid costs, storage charges, dockage fees, or failure to pay costs related to removal due to unsanitary condition, may be sold at a nonjudicial sale.

A marina has a possessory lien for storage fees, dockage fees, repairs, improvements, work-related storage charges, expenses necessary for preservation of the vessel, and expenses reasonably incurred in the sale or other disposition of the vessel. The lien attaches on the date the vessel is brought to the marina or first occupies rental space. Upon default, the marina is required to notify any perfected lienholders.

⁵ See s. 328.17(6), F.S.

⁶ See s. 328.17(6), F.S.

⁷ See s. 328.17(7), F.S.

⁸ See s. 328.17(7), F.S.

⁹ See ss. 328.17(7)(a) – 328.17(7)(c), F.S.

¹⁰ See s. 328.17(7)(c), F.S.

¹¹ See ss. 328.17(8) – 328.17(9), F.S.

¹² See s. 83.806, F.S.

The lien is satisfied if:

- The marina gives written notice to the owner by personal service, certified mail (presumed delivered when properly mailed), or by posting notice at the marina and on the vessel; and
- The notice includes: an itemized statement of the claim containing the amount due at the time of notice and the date that amount became due; a description of the vessel; a demand for payment; a conspicuous statement warning that the vessel will be advertised for sale and sold at a particular time and place; and a name, address, and phone number of the marina that the owner may contact to respond.

If any amounts remain due 120 days after written notice, the marina may advertise the sale of the vessel. The advertisement:

- Must be published once a week for 2 weeks in a general circulation newspaper, or if no such newspaper exists, be posted conspicuously in 3 locations in the neighborhood surrounding the marina at least 10 days prior to the sale; and
- Must include: a general description of the vessel; the address of the marina and the name of the vessel owner; and the time, place, and manner of the sale to occur no sooner than 15 days after first publication of the advertisement.

The sale must be conducted in a "commercially reasonable manner," as that phrase is defined by the Uniform Commercial Code.

The owner may redeem the vessel by paying the amount required to satisfy the lien, and any reasonable expenses incurred prior to the sale. After redemption, the lienholder is not liable to the owner. Unless otherwise provided by the law, a good faith purchaser takes the vessel unencumbered, except for prior liens perfected under the Uniform Commercial Code, even if the marina does not comply with the law relating to nonjudicial sale of vessels.

The marina may apply the proceeds derived from the sale toward satisfaction of its lien, unless another lien has priority. If the proceeds are subject to liens first in priority, the marina must notify the lienholders. If any proceeds remain after prior liens are satisfied, the marina may satisfy its lien. If any remain thereafter, the marina must deliver the balance to the previous owner. In the event priority liens exist or a balance remains after satisfaction of the marina's lien, the marina is required to hold the proceeds or balance for 1 year from the date of notification. If the proceeds are not claimed after 1 year, they are deemed abandoned and the marina has no further obligation with regard to payment.

At sale, the marina will deliver a bill of sale and all notice documents to the buyer, who shall present them to DHSMV when applying for transfer of title.

This bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 328.17, F.S., relating to nonjudicial sale of vessels, substantially rewriting that section.

Section 2. Providing that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the costs marinas incur in handling abandoned vessels and vessels subject to liens for storage or repairs. The potential impact is indeterminate because it is impossible to determine the total costs Florida marinas incur under current law.

D. FISCAL COMMENTS:

Under HB 1453, nonjudicial sales proceeds are not required to be deposited with county clerks, therefore, fees currently paid to clerks for this activity will no longer be required. Because the amount of proceeds deposited and fees collected is unavailable, the aggregate impact on clerks of court is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 1453 does not require the exercise of rule-making authority to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by the staff of the Committee on Transportation:

According to proponents of the bill, vessels subject to these nonjudicial sales are either worth very little, or are in poor condition. Consequently, a marina or vessel repair business may spend thousands of dollars on towing and storage, independent appraisals, and auctioneers, only to collect proceeds insufficient to cover costs. Proponents also contend that purchasers are often unwilling to pay 50 percent of the appraised value of a vessel at auction, leaving a marina or repair business to deal with a poorly conditioned or deteriorating vessel.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Judiciary considered the bill on April 14, 2003. The committee adopted two amendments to clarify that prior liens perfected under the Uniform Commercial Code take priority over liens established pursuant to the bill. The bill, as amended, was reported favorably with a committee substitute.